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September 3, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street NW, Room 222
Washington DC 20554

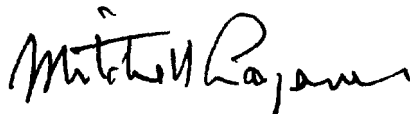
**Re: Rules and Policies for Local Multipoint Distribution Service
and for Fixed Satellite Services, CC Docket No. 92-297**

Dear Mr. Caton:

On behalf of Sierra Digital Communications, Inc. ("Sierra"), I am filing the original and one copy of the attached written ex parte communication pursuant to Section 1.1206(a)(1) of the Commission's Rules.

If there are any questions about this filing, please call me directly at the number above.

Respectfully submitted,


Mitchell Lazarus

Enclosure

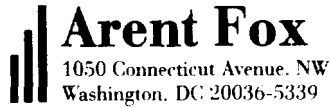
cc (w/encl): Jennifer Warren, Wireless Telecommunications Bureau
Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness

Blair Levin
Jackie Chorney
Rudolfo M. Baca
John Nakahata
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September 3, 1996

Jennifer Warren, Esquire
Wireless Telecommunications Bureau
Federal Communications Commission
Room 5002
2025 M Street NW
Washington DC 20554

**Re: Rules and Policies for Local Multipoint
Distribution Service and for Fixed Satellite
Services, CC Docket No. 92-297**

URGENT

Dear Ms. Warren:

As you know, I am counsel for Sierra Digital Communications, Inc. ("Sierra") in the above-referenced proceeding. It is my understanding that the Bureau intends to place a proposed Report and Order on the Commission's September 12 agenda. I am writing to urge that the Bureau postpone the item until the Commission's October meeting, because negotiations between the parties may be able to resolve the differences concerning reallocation of the 31 GHz band. If an amicable solution can be reached, the Commission will achieve a faster, surer end result, thereby hastening the deployment of LMDS service.

Alternatively, if the Bureau believes it is essential to proceed on September 12, it should recommend that the Commission adopt the sharing plan set out in the Reply Comments of Sierra (as well as of Endgate Corporation and the Hewlett-Packard Company). This will ensure that a full 1,000 MHz of unencumbered spectrum is available for LMDS while preserving the services currently offered by public safety and other entities in the 31 GHz band. Sierra believes this is the only proposed solution in the record that is not "arbitrary and capricious" under the Administrative Procedure Act.

Arent Fox

Jennifer Warren, Esquire
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The Bureau's Plan Leaves Little Time for Consideration of the Issues.

Sierra recognizes that LMDS has been slow to launch in part because of spectrum allocation issues, but that does not justify a precipitate decision concerning the 31 GHz band. The Commission first gave public notice of its proposal to allocate 31 GHz to LMDS on July 22, 1996, just six weeks ago yesterday.¹⁷ Since then the parties have filed two rounds of comments. In their reply comments filed only twelve days ago, four of the parties proposed plans for sharing the band between LMDS and point-to-point 31 GHz users. Three of those parties proposed identical plans, and one of the major LMDS interests urged a different resolution. Only one major interest remains to be heard from. This represents very substantial progress toward a negotiated resolution in an extremely short time.

Bureau staff members indicated last week that the Bureau intends to place the item on the Commission's agenda for September 12. Because of constraints imposed by the Sunshine Act and internal Commission processes, this means the substance of the item must be settled by today or tomorrow. It is not possible for the parties involved to reach agreement by then. Not only has the time been very short, but the entire period following reply comments on August 22 came during the peak late-August vacation season and the Labor Day holiday weekend. Agreement is further hindered by the fact that some of the parties are large corporations that require approval of a settlement at several levels of the organization.

Based on its ongoing conversations with the other parties, Sierra believes there is a reasonable prospect of reaching a negotiated resolution within a few weeks. Sierra therefore asks the Bureau to defer briefly submitting the item to the Commission for its consideration. Because a settlement would eliminate the need for parties to seek redress through reconsideration or judicial review, a short period for continued negotiation now may well advance by months or years the date when LMDS operators can begin providing service at 31 GHz.

The Record Supports the Sharing Proposal Supported By Sierra, Endgate, and Hewlett-Packard.

A negotiated settlement would eliminate the further proceedings likely to result from adopting the Commission's proposal to allocate all 300 MHz of the

¹⁷ Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92-297, First Report and Order and Fourth Notice of Proposed Rulemaking, FCC 96-311 (released July 22, 1996).

Arent Fox

Jennifer Warren, Esquire
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31 GHz band to LMDS. That proposal would give each LMDS operator more spectrum than the Commission has concluded on the record that it needs for the service, while impairing use of the band for important public safety and other services. The current proposal would give each LMDS operator 1300 MHz of spectrum, 1150 MHz of which is unencumbered, and would leave no spectrum at all for 31 GHz point-to-point operations. As Sierra noted in its Comments and Reply Comments, the plan is defective in two respects. First, the record does not support an LMDS operator's need for more than 1,000 MHz of unencumbered spectrum. Second, the Commission's proposal completely overlooks the public interest in current 31 GHz operations, contrary to judicial precedent that requires the Commission to consider the public interest even in unprotected services.^{2/}

Sierra recognizes that the record and public-interest considerations arguably justify allocating 150 MHz of 31 GHz spectrum to LMDS, and accordingly has urged the Commission to adopt a sharing plan that would allocate 150 MHz to LMDS and 150 MHz for point-to-point operations. That allocation has some support in the record. But a 31 GHz allocation to LMDS in excess of 150 MHz lacks justification in the record. For that reason, and because such an allocation would harm the public interest by threatening operations at 31 GHz, it would be arbitrary and capricious under the Administrative Procedure Act, and so would be vulnerable on judicial review.^{3/}

In short, Sierra asks the Commission to defer action on this item briefly to give the parties a chance to reach agreement, and to go through their own internal approval procedures. In the alternative, Sierra submits that a 31 GHz allocation to LMDS greater than 150 MHz would be unsupported by LMDS's demonstrated need and would fail adequately to acknowledge the public interest in 31 GHz operations, and for those reasons would be subject to reversal as being arbitrary and capricious.

^{2/} Appropriate citations appear in Sierra's Reply Comments.

^{3/} CellularVision has proposed an alternative 31 GHz sharing plan that would give LMDS 250 MHz, leaving 50 MHz for point-to-point operations. CellularVision argues that current 31 GHz operations could be accommodated within 50 MHz through equipment redesign. But CellularVision overlooks the critical fact that higher capacity radios are necessarily more expensive to the end user. Most of the current end-users at 31 GHz are tax-supported, cash-strapped municipalities and counties. The economy of the equipment is an important factor in assessing the public interest of 31 GHz operations, and the use of economical equipment requires a full 150 MHz of spectrum.

Arent Fox

Jennifer Warren, Esquire

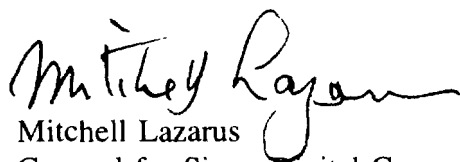
September 3, 1996

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Kindly date-stamp and return the enclosed extra copy of this letter.

If there are any questions about this letter, please call me directly at the number above.

Respectfully submitted,



Mitchell Lazarus

Counsel for Sierra Digital Communications, Inc.

cc (by hand delivery):

Office of the Secretary (2 copies)

Chairman Reed E. Hundt

Commissioner James H. Quello

Commissioner Rachelle B. Chong

Commissioner Susan Ness

Blair Levin

Jackie Chorney

Rudolfo M. Baca

John Nakahata

Suzanne Toller

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Douglas G. Lockie, Endgate Corporation

Douglas A. Gray, Hewlett-Packard Company

Counsel for Texas Instruments, Inc.

Hal Tenney, Sierra Digital Communications, Inc.